

## **791 KAR 1:030. Procedures for hearings.**

RELATES TO: KRS Chapter 13B, 165A.350(4)(b), 165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the commission to promulgate administrative regulations for the administration of KRS Chapter 165A. This administrative regulation establishes hearing procedures.

Section 1. Definitions. (1) "Charge" means a specific allegation contained in a formal pleading, as established in Section 5(3) of this administrative regulation, issued by the commission alleging a violation of a specified provision of KRS Chapter 165A or the requirements established in 791 KAR Chapter 1.

(2) "Complaint" means a written allegation of misconduct by an agent or school, or other allegation of a violation of KRS Chapter 165A, the requirements established in 791 KAR Chapter 1, or another state or federal statute or administrative regulation applicable to an agent or school.

(3) "Complaint committee" means the committee appointed pursuant to KRS 165A.340.

(4) "Formal pleading" means a formal administrative statement authorized by the commission which sets forth charges against a licensed school or agent and commences a formal disciplinary proceeding, pursuant to KRS Chapter 13B, or requests a court to take action.

(5) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the commission to assist the commission in the investigation of a complaint or an investigator employed by the Attorney General for the commission.

Section 2. Complaint Committee. In accordance with KRS 165A.340(12), the complaint committee shall:

(1) Be appointed by the chair of the commission to:

(a) Review complaints and investigative reports;

(b) Participate in an informal proceeding to resolve complaints; and

(c) Make recommendations for disposition of complaints to the full commission including the dismissal of a complaint or the issuance of a formal pleading; and

(2) Consist of three (3) persons who may be assisted by the commission staff and counsel to the commission.

Section 3. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity.

(2)(a) A complaint shall be in writing and shall be filed on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records.

(b) The Form PE-24 shall be signed and certified as to its truth by the person offering the complaint.

(3)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint and the time and place of the complaint committee hearing, once established.

(b) The agent or school shall file a written response with the commission within ten (10)

days from the date of receipt.

(4)(a) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant, along with the time and place of the complaint committee hearing, once established.

(5) Upon receipt of the agent or school's response, the complaint committee may request an additional response from the complainant, agent, or school if additional issues are raised or clarification is needed.

Section 4. Initial Review. (1) After the receipt of a complaint or the expiration of the period for the response, the complaint committee shall consider the complaint, response, and other relevant material available.

(2)(a) The complaint committee may take steps to enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(b) An agreed order or settlement reached through this process shall be approved by the commission.

(c) The complaint committee may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.

(3) If the complaint committee determines a complaint warrants an investigation against either an agent or school, the complaint committee shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity.

Section 5. Results of Initial Review. (1) After a complete review of the complaint, and implementation of any actions available to the complaint committee as set forth in Section 4 of this administrative regulation, a recommendation shall be made by the complaint committee to the commission.

(2) If the commission determines a complaint does not warrant further action or the issuance of a formal pleading against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.

(3) If the commission determines a violation of a statute or administrative regulation may have occurred or has occurred, then the commission shall:

(a) Direct the complaint committee or commission staff to undertake further action as established in KRS Chapter 165A or Section 4 of this administrative regulation;

(b) Direct the issuance of a formal pleading against either an agent or school by commission staff; or

(c) Review the formal pleading and, if approved, it shall be signed by the chairman and served upon the agent or school as required by KRS 13B.050.

Section 6. Operating without Appropriate License or Permit. If the commission receives a complaint that an individual or school may be operating without the appropriate permit or license, the commission shall:

(1) Authorize commission staff to send a letter to the individual or school advising of a possible need for a permit or license, and enclose the appropriate application package;

(2) Authorize commission staff to issue a letter ordering the individual or school to cease and desist from operating the school;

(3) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(4) Initiate action in Franklin Circuit Court for injunctive relief.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form to File a Complaint", Form PE-24, 2017 edition; and

(b) "Authorization for Release of Student Records", Form PE-25, 2017, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (16 Ky.R. 501; Am. 746; eff. 10-13-1989; Recodified from 201 KAR 24:040, 4-22-1991; Recodified from 783 KAR 1:020, 11-7-2002; 34 Ky.R. 1110; 1715; eff. 2-1-2008; Recodified from 201 KAR 40:020, 6-12-2014; 41 Ky.R. 121; 756; eff. 10-31-2014; TAm eff. 4-12-2017.)